

January 9, 2004

Senator John L. Martin, Chair
Representative Theodore Koffman, Chair
Joint Standing Committee on Natural Resources
121st Maine State Legislature
State House Room 437
Augusta, Maine 04333

Dear Senator Martin, Representative Koffman, and members of the committee:

This report is submitted pursuant to the provisions of P&SL 2003 Chapter 30, "An Act to Fund Municipal Collection of Household Hazardous Waste". The legislation required the Finance Authority of Maine to transfer \$438,820 from the Waste Reduction and Recycling Loan Fund, and to transfer principal and interest repayments when received, to the Maine Solid Waste Management Fund, for the purpose of providing support for the operational costs incurred by municipalities in the management of household hazardous waste. This transfer provided a one-time allocation of funds for this purpose. In addition, the legislation required the Department to "conduct a study regarding ongoing sources of funding for municipal collection of hazardous waste".

Background and History

In 1999, the passage of PL 2000, Chapter 779 ("An Act to Reduce the Release of Mercury into the Environment from Consumer Products") and the pending adoption of the Universal Waste Rules by the Board of Environmental Protection led to the initiation of planning for a statewide household hazardous waste ("HHW") collection program. The Department of Environmental Protection and the State Planning Office submitted a draft HHW collection proposal for the Committee's consideration in 2000. The legislature responded by providing some initial funding for planning and infrastructure development.

In 2001, the Department presented a more detailed "Plan for the Statewide Collection of Household Hazardous Waste". The plan included a discussion of

various infrastructure options and several preliminary funding sources. Also in 2001, the State Planning Office contracted with the University of Maine to study costs associated with various types of HHW collection systems. The study resulted in a February 1, 2002 report entitled: "Cost Analysis for Household Hazardous Waste Collection".

Using these two studies as a basis for discussion in 2002, the Natural Resources Committee examined possible funding sources for a state share of the operational costs associated with municipal/regional HHW collection programs. The Committee assumed for purposes of the discussion that the state cost share target would be 50%. Based upon the types of collections systems studied, the actual target was calculated to be approximately \$500,000 annually. Ultimately, the Legislature passed Resolve 2001 Chapter 93 ("Resolve, to Study the Design and Funding of a Household Hazardous Waste and Universal Waste Collection Program"). The Resolve (attached as Appendix A) directed the Department, in cooperation with the State Planning Office and the Department of Agriculture, Food and Rural Resources, to report on the feasibility and design of a long-term funding mechanism "to provide state cost-sharing support to municipalities and regions for the operational costs of a statewide household hazardous waste and universal waste collection program". Specifically, it was required that the report include an analysis of a proposed funding mechanism based on the imposition of fees at the point of retail sale on paint and pesticide products sold within the State.

In response to Resolve 2001, Chapter 93, the Department submitted "A Proposal for Providing State Cost Share Support for the Operation of Municipal and Regional Household Hazardous Waste and Universal Waste Collection Programs" in January of 2003. A copy of that report is attached as Appendix B. The proposed legislation accompanying the report was not enacted into law. Instead, P&SL 2003 Chapter 30 ("An Act to Fund Municipal Collection of Household Hazardous Waste") was passed. This legislation required the Department to "conduct a study regarding ongoing sources of funding for municipal collection of hazardous waste". This report is presented pursuant to the provisions of P&SL 2003 Chapter 30.

Funding Options Evaluated by the Department

Although the focus of this report is potential funding mechanisms, it is important to note that potential cost savings and efficiency measures related to HHW collection should also continue to be evaluated. Two of these in particular should be mentioned here: (1) further analysis of the regulatory context within which private companies handling HHW operate, to determine if there are actions that could be taken to provide them with greater business flexibility and

regulatory clarity; and (2) continued evaluation of product stewardship options that could result in increased opportunities for manufacturer take back and recycling.

Following is a discussion of each of the funding mechanisms identified and evaluated by the Department as a potential funding source for the operation costs associated with municipal and regional household hazardous waste collection programs.

➤ ***Increase in existing statutory “waste handling fees”***

The Maine Solid Waste Management Fund (“MSWMF”) was established at 38 MRSA Section 2201 as “a nonlapsing fund to support programs administered by the State Planning Office and the Department of Environmental Protection”. A copy of 38 MRSA Sections 2201-2206 is attached for reference as Appendix C. This fund currently supports 24 positions at DEP and 6 positions at SPO involved in solid waste management planning, oversight and regulation. Funds from the MSWMF have also been used to support the household hazardous waste and mercury containing product initiatives, the scrap tire abatement program, maintenance and site investigation of an “orphan” landfill, and sampling and analytical costs at several different waste sites. These types of activities are funded by the MSWMF only at times when revenues are sufficient to cover them. Revenues are variable from year to year.

Revenues into the fund are derived from the \$1 fee collected on new tires and batteries at the point of retail sale, and from “waste handling fees” established statutorily at 38 MRSA Section 2203-A. The fees are assessed on certain wastes (primarily “special wastes”) disposed at landfills on a per ton or per cubic yard basis. When the fund was originally established in the late 1980’s, the revenue base was broader and also included revenues from a \$1 fee imposed on the retail sale of new major appliances, new major furniture items, new bathtubs and new mattresses. These fees were eliminated by the Legislature in 1996 and 1997.

Revenues into the MSWMF are variable from year to year and may be affected by a number of different factors. For example, the waste handling fee revenues are vulnerable to shifts in disposal patterns, volumes of waste requiring disposal and the state of the economy in general. Fee amounts are expected to decline through FY 06 due to a temporary decrease in available disposal capacity as a consequence of construction activity associated with the recently licensed expansion of the Waste Management Crossroads Landfill in Norridgewock.

Existing statutory waste handling fees were revised several years ago. Most fees were increased at that time, with decreases in certain fees designed to lower disposal costs for municipalities.

➤ ***Increase in existing hazardous waste transporter fees***

The Maine Hazardous Waste Fund was established as a non-lapsing, revolving fund for the Department's administration of programs for the oversight of hazardous matter and hazardous waste. Expenditures are authorized from the fund for costs incurred in the removal or abatement of an unlicensed discharge or threatened discharge of hazardous waste, waste oil or biomedical waste. The fund is also used to cover the costs of necessary testing, response, inspection and monitoring equipment and supplies, as well as costs associated with response and compliance personnel. Because hazardous waste generated by households is exempt from regulation as a hazardous waste, the Department is not currently authorized to expend money from the fund for HHW programs.

A review of revenue and expenditures for the past 5 years indicates that the fund cannot support any new activity. In the event of a hazardous waste, waste oil or biomedical waste release requiring state response, the balance could quickly be depleted. A single emergency response action to mitigate a major release of hazardous substances such as a train derailment, explosion, fire or act of terrorism could easily impact the state's ability to respond to the needs of the public and the environment. The approximate amount of funds available for emergency response actions at year's end (12/31/03) was only \$1,411,479.

➤ ***Unredeemed bottle deposit funds***

Non-refunded bottle deposits were credited to the Maine Solid Waste Management Fund until FY 98. Unclaimed deposits currently are credited to the General Fund. Under the assumptions that 720 million beverage containers requiring a deposit are sold annually, a 95% return rate is realized on the containers and the average deposit is 5 cents per container, a total of \$1.8 million is theoretically available in unclaimed deposits. The state's earlier experience however, in collecting unclaimed deposits, was that less than a third of the estimated total was actually turned over to the state. If this remains true, the estimate could drop to roughly \$600,000.

PL 2003 Chapter 499 made certain changes to the bottle redemption law establishing a system designed to promote the co-mingling of beverage containers in an effort to improve handling efficiency at redemption centers. Under the provisions of the new law, initiators of deposit who permit their

empty beverage containers to be co-mingled with other initiators' containers, are exempted from the requirement to turn over unredeemed deposit money to the state. This exemption could further reduce the amount of funds received by the state by an as yet unknown amount.

➤ ***General Fund***

Over the past 5 years there has been strong support on the part of many of the stakeholders involved in funding discussions for some level of general fund support for the state's solid waste management programs. All funding presently comes from dedicated sources. Although this option was again discussed as a potential source of ongoing revenue for municipal HHW collection programs, it was not widely viewed as a likely funding source due to shortfalls and ongoing budget gaps.

➤ ***Increase in pesticide registration fees***

Maine currently charges a registration fee on pesticides and household products that contain registered pesticides. Revenues are deposited into a dedicated account that funds the Board of Pesticide Control and other Department of Agriculture staff. An increase in these fees was considered as a funding option since reports concerning HHW collection events in Maine and other states indicate that pesticides are among the highest volume and most expensive wastes handled at collection events. Although the possibility of increasing this fee to provide HHW funding was investigated, existing revenue shortfalls in the account made this approach infeasible. The registration fees were recently increased in order to address the Department of Agriculture's budget shortfall and resource needs.

➤ ***Consumer product fees***

Fees on a variety of different consumer products that might ultimately be handled as household hazardous waste have been considered. From a practical perspective however, it would be very difficult if not impossible to design an effective fee system for many of these products (household cleaners and other chemicals, for example). The numbers of manufacturers, distributors and retailers involved in production and sale of the products would make such a system extremely complicated.

This evaluation of different consumer products led the Department to recommend to the Committee in 2002 that efforts in this area be directed toward paints (architectural coatings only) and a limited number of pesticides. Alternatively, a fee structure could be designed around only paints or

pesticides. Part of the rationale however, for including both products in a fee system was to keep individual fees as low as possible.

Reports concerning household hazardous waste collection events in Maine and other states presented data that showed paints and pesticides typically constitute the largest volume and/or are the most expensive wastes handled at HHW collection events. As discussed above, the Legislature passed Resolve 2001, Chapter 93 ("Resolve, to study the Design and Funding of a Household Hazardous Waste and Universal Waste Collection Program" – attached as Appendix A) that specifically directed the Department to include an analysis of a proposed funding mechanism based on the imposition of fees at the point of retail sale on paint and pesticide products sold within the State. The resulting report: "A Proposal for Providing State Cost Share Support for the Operation of Municipal and Regional Household Hazardous Waste and Universal Waste Collection Programs" is attached as Appendix B.

Conclusions

None of the options evaluated has the support of all interested stakeholders. The choice of a funding mechanism remains a legislative policy decision. Some of the basic, relevant questions that may guide the discussion and decision-making on the matter are: Should there be a state cost share? If so, at what level? How can the funds be collected in the most equitable and feasible manner?

I look forward to further discussion of this important issue with you.

Sincerely,

Dawn R. Gallagher
Commissioner

